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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,183	07/16/2003	Daniel S.J. Choy	40290-0009	2235
20480 7590 03/07/2007 STEVEN L. NICHOLS RADER, FISHMAN & GRAVER PLLC 10653 S. RIVER FRONT PARKWAY SUITE 150 SOUTH JORDAN, UT 84095			EXAMINER SMITH, FANGEMONIQUE A	
			ART UNIT 3736	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/07/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

**Office Action Summary**

Application No.

10/622,183

Applicant(s)

CHOY, DANIEL S.J.

Examiner

Fangemonique Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 41-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is responsive to the Response to Amendment filed on November 28, 2006. The Examiner acknowledges the cancellation of claims 21-29, 32-36 and 55-59; and amendment of claims 41, 43-48, 50 and 51. Claims 41-54 are pending. All 112 rejections have been overcome through the amendments submitted in the Response to Office Action filed on November 28, 2006.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 41- 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark et al. (U.S. Patent Number 5,928,160).

In regard to claims 41- 48, Clark et al. disclose a home hearing test comprising a portable record member (14) with at least one audio track recorded on the record member (col. 6, lines 42-67).

The audio track comprises a succession of signal recordings, recorded at a predetermined frequency and amplitude (col. 11, lines 12-67; col. 12). The signal recordings are delivered in a sequence of descending tones and are recorded for a predetermined length of the audio track.

The Clark et al. apparatus comprises a calibration tone as a first means for applying a first sound and a series of predetermined tones as a second means for applying a succession of additional

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sounds (col. 6, lines 10-67). As shown in Figures 9A and 9B, at least 30 signals are recorded at the predetermined frequency and are applied incrementally at the selected frequency.

4. Claims 49-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Fletcher et al. (U.S. Patent Number 4,049,930).

In regard to claims 49-54, Fletcher et al. disclose a detection system for detecting malfunctions in electrical signal processing circuits in the form of frequency malfunctions. The device comprises an amplifier, which is a sound generator source (12) for the Fletcher et al. apparatus. The device further includes a phase shift network (48) as shown in figures 1 and 2 below.

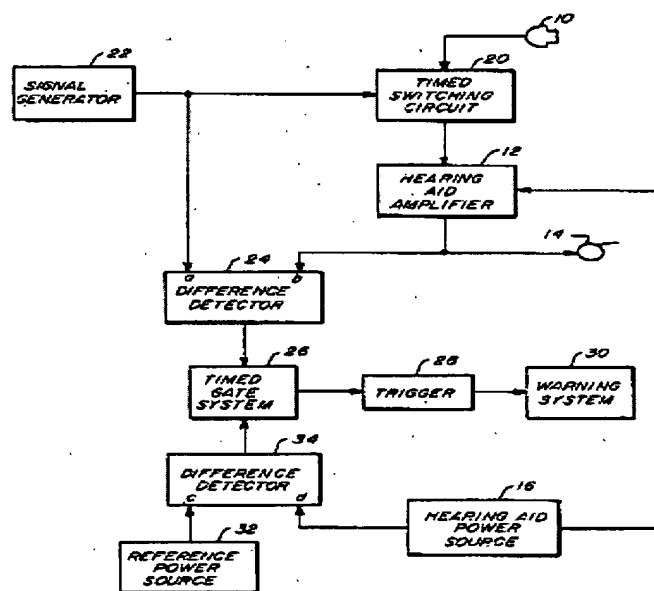
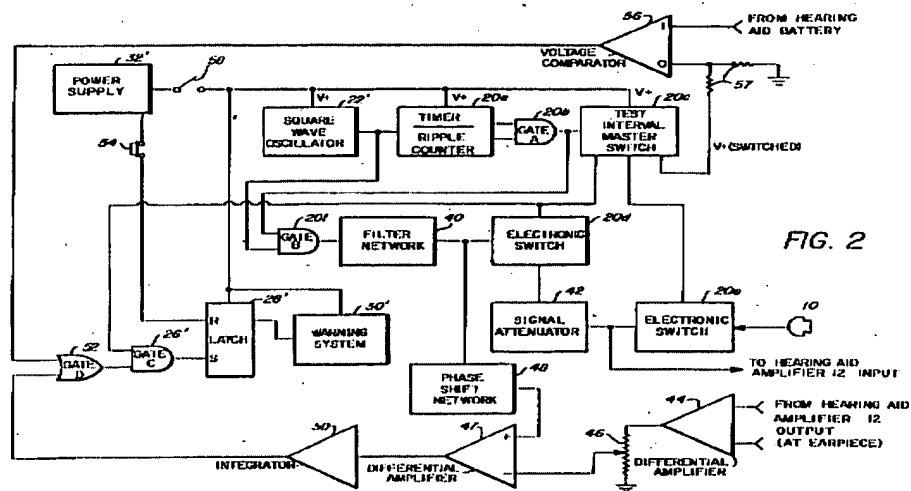


FIG. 1



The sound signals generated are sent as output from the amplifier (12) to a speaker or earpiece transducer (14) (col. 4, lines 18-68). The circuit disclosed by Fletcher et al. with the phase shift network included is capable of shifting the phase in equal increments at least thirty times. The device is also capable of changing the phase about every ten minutes.

### *Response to Arguments*

5. In response to applicant's argument that the Clark prior art reference does not teach or suggest an apparatus for treating tinnitus sufferers, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Examiner submits the prior art reference includes all structural elements of Applicant's invention as described above, therefore the prior art reference meets the claim. Applicant also argues Clark et al. prior art reference does not disclose a succession of phase shifted signal recordings at a common

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frequency whose phase shift sum equate to at least a half of a wavelength. Examiner submits Clark et al. disclose having a sequence of audible signals recorded on an audio track at the same frequency (Figs. 9a and 9b). Each signal is recorded for a predetermined amount of time and the time relation between each signal defines the phase shift of each consecutive signal. Considering the signal duration and the signals are not occurring simultaneously, the next consecutive signal is shifted in phase by 500 ms duration. Applicant's arguments filed November 28, 2006 have been fully considered but they are not persuasive. The rejection stands..

### *Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fangemonique Smith whose telephone number is 571-272-8160. The examiner can normally be reached on Mon - Fri 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read "Max Hindenburg", is located in the bottom right corner of the page.